

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DENNIS LITTELL,)
)
 Plaintiff,)
)
 v.) 1:10CV152
)
 DIVERSIFIED CLINICAL SERVICES,)
 INC., and REX HOSPITAL, INC.,)
)
 Defendants.)

ORDER

This matter is before this court for review of the Memorandum Opinion, Order and Recommendation ("Recommendation") filed on May 10, 2013, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 27.) In the Recommendation, the Magistrate Judge recommends that the Motion to Dismiss (Doc. 13) filed by Defendant Rex Hospital, Inc. ("Rex") be granted in that the court should dismiss Plaintiff Dennis Littell's first and second claims for relief against Defendant Rex and Plaintiff's third claim for relief against Defendants Diversified Clinical Services, Inc., and Rex. The Recommendation was served on the parties to this action on May 10, 2013. Plaintiff's counsel filed objections (Doc. 30) to the Recommendation, and Defendant

Rex's counsel filed a Response (Doc. 32) to Plaintiff's objections.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objection was made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation with the exception of the analysis found at pages 18 through 20 discussing the contrary analysis as described in McHan v. Cherokee Cnty., Civil No. 2:06CV21, 2006 WL 3694540 (W.D.N.C. Dec. 13, 2006) (Thornburg, J.) and Cox v. Indian Head Indus., Inc., 123 F. Supp. 2d 892, 900 (W.D.N.C. 2000) (Thornburg, J.) (unpublished). This court finds the analysis in Gallimore v. Newman Mach. Co., 301 F. Supp. 2d 431, 452 (M.D.N.C. 2004) and the cases cited by the Magistrate Judge at pages 16-18 persuasive and sufficient to explain this court's analysis. As the Magistrate Judge aptly described in footnote

6, the Fourth Circuit has stated that "[a]bsent a strong countervailing federal interest, the federal court should not elbow its way into this controversy to render what may be an uncertain and ephemeral interpretation of state law." See generally Time Warner Entm't-Advance/Newhouse P'ship v. Carteret-Craven Elec. Membership Corp., 506 F.3d 304, 314 (4th Cir. 2007).

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation (Doc. 27) is **ADOPTED** except as set forth herein. **IT IS FURTHER ORDERED** that the Motion to Dismiss (Doc. 13) filed by Defendant Rex Hospital, Inc., is **GRANTED** in that the court dismisses Plaintiff Dennis Littell's first and second claims for relief against Defendant Rex and Plaintiff's third claim for relief against Defendants Diversified Clinical Services, Inc., and Rex.

This the 27th day of September, 2013.


United States District Judge